

ARKANSAS CODE ANNOTATED

MORTGAGE LOAN COMPANIES

AND LOAN BROKERS

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SUBCHAPTER

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SUBCHAPTER 1 - GENERAL PROVISIONS

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23-39-101. Title.

This chapter shall be known and may be cited as the "Mortgage Loan Company and Loan Broker Act".

23-39-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another person;
- (2) "Commissioner" means the Arkansas Securities Commissioner;
- (3) "Mortgage loan" means any loan secured by a mortgage on real property;
- (4) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (5) (A) "Mortgage loan company" means any person who directly or indirectly:
 - (i) Holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien or mortgage on real property;
 - (ii) Holds himself out for hire to serve as an agent for any person who has money to loan, which loan is or will be secured by a lien or mortgage on real property;
 - (iii) Holds himself out as being able to make, purchase, place, sell, or exchange loans secured by liens or mortgages on real property;

- (iv) Holds himself out as being able to service loans secured by liens or mortgages on real property; or
 - (v) Holds himself out to be a loan broker.
- (B) "Mortgage loan company" shall not mean any person who obtains, makes, purchases, places, sells, exchanges, or services, in the aggregate, fewer than six (6) loans secured by liens or mortgages on real property within any ten-year period;
- (6) "Loan broker" means any person who engages in the business of purchasing wages or salaries or who acts as a go-between, finder, or agent of a lender or borrower of money for the purpose of procuring a loan of money or who engages in the business of guaranteeing or endorsing notes and other evidences of indebtedness.
 - (A) Any reference to, requirement for, or provision relating to mortgage loan company in this chapter shall also apply to a loan broker.
 - (B) The application and registration for a mortgage loan company and loan broker shall be the same.

23-39-103. Penalties.

- (a) Any person who willfully violates any provision of this chapter, except § 23-39-104 or who willfully violates § 23-39-104 knowing the statement to be false or misleading in any material respect, shall be guilty of a Class B felony as that term is defined in § 5-1-101 et seq.
- (b) Any person who willfully violates any rule or order of the commissioner, authorized under this chapter, shall be guilty of a Class B misdemeanor as that term is defined in § 5-1-101 et seq., but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.
- (c) The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the appropriate prosecuting attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.
- (d) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime in statute or at common law.

23-39-104. False statements.

It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

23-39-105. Fraud.

It is unlawful for any mortgage loan company, in connection with the operation, management, or servicing of mortgage contracts, directly or indirectly to:

- (1) Employ any device, scheme, or artifice to defraud; or
- (2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

SUBCHAPTER 2 - SUPERVISION

SECTION.

23-39-201. Commissioner's powers and duties generally.

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23-39-201. Commissioner's powers and duties generally.

The commissioner shall exercise general supervision and control over mortgage loan companies and loan brokers doing business in the State of Arkansas. In addition to the other duties imposed upon him by law, the powers and duties of the commissioner are to:

- (1) Make reasonable rules and regulations which may be necessary for making this chapter effective;
- (2) Conduct investigations which may be necessary to determine whether any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter;

- (3) Conduct any examinations, investigations, and hearings, in addition to those specifically provided for by law, which may be necessary and proper for the efficient administration of the mortgage loan company laws of this state;
- (4) Classify as confidential certain records and information obtained by the Department when such matters are obtained from a governmental agency upon the express condition that they shall remain confidential, or by investigation or examination by the department's staff; however, applications for registration or renewal, including financial statements contained therein, shall be public documents.

23-39-202. Investigations by commissioner - Injunctions.

- (a) The commissioner may investigate, either upon complaint or otherwise, when it appears that a mortgage loan company is conducting its business in an unsafe and injurious manner or in violation of this chapter, or the regulations promulgated thereunder by the commissioner, or when it appears that any person is engaging in the mortgage loan company business without being registered under the provisions of this chapter.
- (b)
 - (1) Whenever it appears, upon sufficient grounds or evidence satisfactory to the commissioner, that any mortgage loan company has engaged in or is about to engage in any act or practice in violation of this chapter or any rule or regulation or order hereunder, or the assets or capital of any mortgage loan company is impaired or the mortgage loan company's affairs are in an unsafe condition, the commissioner may:
 - (A) Refer the evidence which is available concerning violations of this chapter or any rule, regulation, or order hereunder, to the appropriate prosecuting attorney, who may, with or without such reference, institute the appropriate criminal proceedings under this chapter;
 - (B) Summarily order the mortgage loan company to cease and desist from the act or practice, during which time the commissioner may apply to the Chancery Court of Pulaski County to enjoin the act or practice and to enforce compliance with this chapter or any rule, regulation, or order here under. However, the commissioner may, without issuing a cease and desist order, apply directly to the Chancery Court of Pulaski County for injunctive relief.
 - (2) Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted, and a receiver or conservator may be appointed for defendant or defendant's assets.

- (3) The court may not require the commissioner to post a bond.

23-39-203. Commissioner's investigatory powers.

- (a) In the conduct of any examination, investigation, or hearing, the commissioner may:
- (1) Compel the attendance of any person or obtain any documents by subpoena;
 - (2) Administer oaths;
 - (3) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and, in connection therewith, require the production of any books, records, or papers relevant to the inquiry;
- (b) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Chancery Court of Pulaski County, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
- (c) The cost of any examination, investigation, or hearing conducted under this chapter may be assessed to and collected from the mortgage loan company in question by the commissioner.

23-39-204. Records, reports, and examinations.

- (a) Every mortgage loan company shall make and keep any accounts, correspondence, memoranda, papers, books, data, and other records which the commissioner by rule prescribes. All records so required shall be preserved for five (5) years unless the commissioner by rule prescribes otherwise for particular types of records.
- (b) Every mortgage loan company shall file such financial reports as the commissioner by rule prescribes. If the information contained in any documents filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

- (c)
 - (1) All the records required to be maintained by this chapter are subject at any time or from time to time to such periodic, special, or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.
 - (2) A mortgage loan company shall pay a fee for each examination not to exceed one hundred dollars (\$100.00) per day, or fraction thereof, that any and all examiners are absent from the office of the commissioner for the purpose of making the examination. In addition thereto, the company shall pay the actual travel, lodging, and meal expenses of such authorized examiner or examiners to and from Little Rock.
 - (3) For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with any agency of the state or federal government, other states, or the Federal National Mortgage Association and may accept their examinations in whole or in part in lieu of an examination by the commissioner.
- (d) Except as otherwise provided by law, applications for registration or renewals, all papers, documents, reports, and other written instruments filed with the commissioner, under this chapter, are open to public inspection. However, the commissioner may withhold from public inspection, for such time as he considers necessary, any information which, in his judgment, the public welfare or the welfare of any mortgage loan company requires to be so withheld. All investigations and evidence contained therein shall be non-public until such time as the commissioner makes all or part of the investigation public.

23-39-205. Filing and destruction of documents.

- (a) A document is filed when it is received by the commissioner.
- (b) The commissioner may permit the destruction of any document filed with the State Securities Department or the Securities Commissioner after:
 - (1) Six (6) years from the date of filing of the documents; or
 - (2) The reproduction of the documents by photograph or microphotograph of a permanent nature.

23-39-206. Review of order of commissioner.

- (a)
 - (1) Any person aggrieved by a final order of the commissioner may obtain a review of the order in any state court of competent jurisdiction by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part.
 - (2) A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part.
- (b)
 - (1) The findings of the commissioner as to the facts, if supported by competent, material and substantial evidence, are conclusive.
 - (2) If either party applies to the court for leave to adduce additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper.
 - (3) The commissioner may modify his findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.
- (c) The judgment of the court is final, subject to review by the Supreme Court.
- (d) The commencement of proceedings under subsection (a) of this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

SUBCHAPTER 3 - REGISTRATION AND OPERATION

SECTION.

23-39-301. Registration required.

23-39-302. Application for registration or renewal.

23-39-303. Registration fees - Duration of registration.

23-39-304. Surety bond or cash deposit.

23-39-305. Net worth requirement.

23-39-306. Exemptions from registration, bond and net worth requirements.

23-39-307. Rejection, suspension, or revocation of registration.

23-39-308. Notice of order of suspension - Hearing.

23-39-309. Escrow Accounts.

23-39-301. Registration required.

It is unlawful for any person to transact business in this state, either directly or indirectly, as a mortgage loan company or loan broker without first filing an application with the commissioner and obtaining a registration certificate under this chapter.

23-39-302. Application for registration or renewal.

Each verified application for registration or renewal shall be filed in writing with the commissioner and contain the following:

- (1) The name of the applicant and each of the applicant's affiliates and the name under which the applicant will conduct business in Arkansas, together with the articles of incorporation, articles of partnership, or any other appropriate document;
- (2) The location of the applicant's principal office and each branch office in this state;
- (3) The name, residence address, and business address of each person having an interest in the business as principals, partners, officers, trustees, directors, and managers, specifying the capacity and title of each;
- (4) The general plan and character of the business;
- (5) Audited financial statements of the applicant prepared by an independent certified public accountant accompanied by an opinion acceptable to the commissioner as of a date not more than twelve (12) months preceding the application date;

- (6) The length of time the applicant has been engaged in business;
- (7) Disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress against the applicant;
- (8) The registration fee;
- (9) Any other information which the commissioner may by rule or order require.

23-39-303. Registration fees - Duration of registration.

- (a) At the time of application, applicants shall pay to the commissioner two hundred fifty dollars (\$250) for initial registration and one hundred fifty dollars (\$150) for each renewal registration.
- (b)
 - (1) The initial registration period shall not exceed twelve (12) months and shall expire on the last day of the third month after the applicant's fiscal year end or after the date of audited financial statements if that date differs from the fiscal year end.
 - (2) Each renewal registration period shall be for twelve (12) months unless otherwise permitted by the commissioner.

23-39-304. Surety bond or cash deposit.

- (a)
 - (1) Upon application for initial registration or renewal of registration, each mortgage loan company shall deposit with the commissioner a corporate surety bond in the amount of thirty-five thousand dollars (\$35,000).
 - (2) Any appropriate deposit of cash or securities issued by the federal government, the State of Arkansas, or any political subdivision thereof shall be accepted in lieu of any corporate surety bond required.
 - (3) Deposits of cash or securities shall not be withdrawn until five (5) years after the last effective date of the registration.
- (b)
 - (1) Every bond shall provide for suit thereon by any person who has a cause of action under this chapter.
 - (2) In no event shall the total liability of the surety, to all persons, cumulative or otherwise, exceed the amount specified in the bond.
 - (3) Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within five (5) years after the act upon which it is based.

- (4) The bond of the mortgage loan company shall be in substantially the form as the commissioner by rule prescribes.

23-39-305. Net worth requirement.

Each mortgage loan company shall have net worth of not less than twenty-five thousand dollars (\$25,000). "Net Worth" shall mean the difference between the mortgage loan company's total assets and total liabilities as reflected in a balance sheet prepared in accordance with generally accepted accounting principles.

23-39-306. Exemptions from registration, bond, and net worth requirements.

- (a) Unless indicated otherwise, the following shall be exempt from registration, bond, and net worth requirements under this chapter:
 - (1) Any trust company or industrial loan company chartered under the laws of this State, insurance company licensed or authorized to conduct business with the Arkansas Insurance Department, small business investment corporation licensed pursuant to the Small Business Investment Act of 1958, as amended, real estate investment trust as defined in 26 U.S.C. § 856, or any state or federally chartered bank, savings bank, savings and loan association, or credit union whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or any direct, wholly owned subsidiary of one of these organizations;
 - (2) An attorney at law rendering services in the performance of his duties as an attorney at law;
 - (3) (A) An Arkansas licensed real estate broker rendering services in the performance of his duties as a real estate broker who obtains financing for a real estate transaction if:
 - (i) The real estate broker does not act as a loan broker in more than five (5) transactions during any twelve-month period;
 - (ii) He does not receive a fee for his activities as a loan broker until after financing is actually obtained; and
 - (iii) He files with the commissioner, within thirty (30) days of each transaction, a disclosure statement describing the transaction, which statement shall contain any information which the commissioner by rule or order may require.

- (B) An Arkansas licensed real estate broker rendering services in the performance of his duties as a real estate broker who acts as a loan broker and who receives a fee for obtaining financing in six (6) or more real estate transactions in any twelve-month period must register under this chapter but is exempt from the net worth requirements herein;
- (4) Any mortgage loan company which is subject to licensing, supervision, or auditing by the Federal National Mortgage Association ("Fannie Mae"), the Government National Mortgage Association (Ginnie Mae), or the United States Department of Housing and Urban Development ("HUD") as an approved seller or servicer shall be exempt from the registration requirements of this chapter. However, upon the initial or renewal filing of the proof of exemption required by subsection (b) of this section, each such mortgage loan company shall submit annual audited financial statements of its books and records which reflect it has a net worth of at least twenty-five thousand dollars (\$25,000) accompanied by an opinion acceptable to the commissioner and deposit the corporate surety bond, cash or securities in accordance with Section 23-39-304 of this chapter. The audited financial statements shall be filed with the commissioner within ninety (90) days of the close of its fiscal year and the most current audited financial statements which are no more than twelve (12) months old shall be filed with the initial filing. Any mortgage loan company which was approved to participate in the United States Department of Veterans Affairs Loan Guaranty Program on or before July 1, 1997, shall be exempt from the registration, bond, and net worth requirements of this chapter so long as that mortgage loan company remains so approved to participate and is otherwise in compliance with the provisions of this chapter;
- (5) Any person doing any act under order of any court;
- (6) Only one (1) natural person, or husband or wife, who provides funds for investment in loans secured by a lien on real property, on his own account, who does not charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance, and recording services and who does not collect funds to be used for the payment of any taxes or insurance premiums on the property securing the loans;
- (7) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment advisor duly registered with the State Securities Department.

- (8) The United States, the State of Arkansas or any other state, any Arkansas city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the foregoing;
 - (9) Any person, or wholly owned subsidiary thereof, who makes sales of real property which that person owns and who makes purchase money loans to the purchasers of the real property, which loans are secured by a lien or mortgage on that real property, provided that no funds for the payment of insurance and taxes on the real property are held by the maker of the liens or mortgages and that the maker of the liens or mortgages does not sell the liens or mortgages in the secondary market other than to affiliated or subsidiary persons;
 - (10) Any agricultural loan organization which is subject to licensing, supervision, or auditing of the United States Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, Farmers Home Administration, Farm Credit Administration, or the United States Department of Agriculture;
 - (11) Any loan broker who does not receive a fee or other consideration other than from the lender after financing is actually obtained, if the lender is registered or exempted from registration pursuant to the provisions of this subchapter.
- (b) (1) Any person doing business in the state under the exemption set forth in subdivision (a)(4) of this section shall file proof of the exemption in such form as the commissioner may prescribe, together with a filing fee of one hundred dollars (\$100.00).
 - (2) The filing fee for each annual audited financial statement which is filed pursuant to subdivision (a)(4) of this section shall be fifty dollars (\$50.00).

23-39-307. Rejection, suspension, or revocation of registration or exemption.

- (a) The commissioner may reject, suspend or revoke any registration when the applicant or registrant:
 - (1) Does not meet the net worth requirement of § 23-39-305;
 - (2) Is unfit, through lack of financial responsibility, experience, or otherwise, to conduct the business of a mortgage loan company or loan broker, as the case may be;

- (3) Does not conduct his business in accordance with law or has violated any provision of this chapter;
 - (4) Collects interest at a usurious rate;
 - (5) Is in such financial condition that he cannot continue in business with safety to his customers;
 - (6) Has been guilty of fraud in connection with any transaction governed by this chapter;
 - (7) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of the mortgage loan company business;
 - (8) Has knowingly made or caused to be made to the commissioner any false representation of material fact, or has suppressed or withheld from the commissioner any information which the applicant or registrant possesses and which, if submitted by him, would have rendered the applicant or registrant ineligible to be registered under this chapter;
 - (9) Has failed to account to persons interested for all funds received for the escrow account;
 - (10) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under the provisions of this chapter;
 - (11) Has been convicted of a felony or any misdemeanor of which fraud is an essential element.
- (b) The commissioner may reject or revoke any exemption under this chapter when the applicant or person has failed to comply with the provisions of § 23-39-306(a)(4), or for any of the grounds set forth in subsection (a)(2)-(a)(11) of this section.

23-39-308. Notice of order of suspension - Hearing.

- (a) Notice of the entry of any order or suspension, or of refusing a registration to any mortgage loan company, shall be given in writing, served personally, or sent by certified mail or by telegraph to the company affected.

- (b) The company, upon application, is entitled to a hearing, but if no application for a hearing is made within twenty (20) days after the entry of an order of suspension or of refusing a registration of any company, the commissioner shall enter a final order in either case.

23-39-309. Escrow accounts.

- (a)
 - (1) All moneys paid to the mortgage loan company for payment of taxes, loan commitment deposits, work completion deposits, appraisals, credit reports or insurance premiums on property which secures any loan made or serviced by the mortgage loan company shall be deposited in an account which is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration and shall be kept separate, distinct, and apart from funds belonging to the mortgage loan company.
 - (2) The funds, when deposited, are to be designated as an "escrow account", or under some other appropriate name, indicating that the funds are not the funds of the mortgage loan company.
- (b) The mortgage loan company shall, upon reasonable notice, account to any debtor whose property secures a loan made by the mortgage loan company for any funds which that person has paid to the mortgage loan company for the payment of taxes or insurance premiums on the property in question.
- (c) The mortgage loan company shall, upon reasonable notice, account to the commissioner for all funds in the company's escrow account.
- (d) Escrow account funds are not subject to execution or attachment on any claim against the mortgage loan company.
- (e) It is unlawful for any mortgage loan company knowingly to keep or cause to be kept any funds or money in any bank under the heading of "escrow account" or any other name designating the funds or moneys belonging to the debtors of the mortgage loan company, except actual funds paid to the mortgage loan company for the payment of taxes and insurance premiums on property securing loans made or serviced by the company.